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Federal Communications Commission  
Office of Secretary

BY HAND

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation**  
Closed Captioning and Video Description of  
Video Programming, MM Docket No. 95-176

Dear Mr. Caton:

This is to provide notice that James A. Martin, Executive Vice President and Chief Operating Officer of Fox Sports Net, LLC and Robert L. Hoegle, counsel for Fox Sports Net, met on May 7 with the following persons regarding the above-referenced rulemaking: Meredith Jones, William H. Johnson, JoAnn Lucanik, John K. Adams, Marcia A. Glauberman, and Alexis D. Johns. An original and one copy of this letter and enclosure are being submitted to you for inclusion in the record in this proceeding, and copies are being provided to each attendee.

During that meeting, we discussed the factual bases for a categorical exemption for regional sports networks from mandatory closed captioning. In addition to reviewing the facts set forth in Fox Sports Net's Comments, filed in this proceeding on February 28, 1997, we reviewed each of the factual subjects set forth in the enclosed "Regional Sports Networks: Factors Supporting Categorical Exemption." We also reviewed and discussed each of the following documents, copies of which were provided to the meeting attendees and are enclosed:

Regional Sports Programming Services Managed by Fox Sports  
Net (Exhibit A to Comments);

Regional Sports Networks Viewership;

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Regional Sports Networks Average Event Production Costs; and

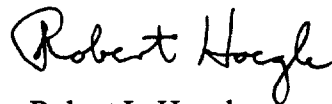
Regional Sports On-Screen Graphics (Exhibit B to Comments).

During the course of such review, we responded to questions from the Commission attendees regarding the data presented in the above documents.

Finally, we corrected an inadvertent error in Fox Sports Net's original Comments at 6-7, clarifying that the ratings used in the examples were for the DMA and the resulting numbers of viewing households should not have been reduced "based upon cable penetration." Copies of corrected pages 6-7 of the Comments are enclosed.

If you have any questions regarding the above information or enclosures, please contact the undersigned.

Very truly yours,



Robert L. Hoegle

RLH:bpy  
Enclosures

cc: Meredith Jones, Chief, Cable Services Bureau (w/encl.)  
William H. Johnson, Deputy Chief (Policy), Cable Services Bureau (w/encl.)  
JoAnn Lucanik, Chief, Policy and Rules Division (w/encl.)  
John K. Adams, Esquire (w/encl.)  
Marcia A. Glauberman, Senior Statistician (w/encl.)  
Alexis D. Johns, Esquire (w/encl.)

**REGIONAL SPORTS NETWORKS  
FACTORS SUPPORTING CATEGORICAL EXEMPTION**

**I. Relative Market Size and Degree of Distribution**

A. By definition, regional networks have limited distribution.

-- See Exhibit A to initial comments.

B. Professional leagues limit the geographic areas within which local professional teams may televise their games.

-- E.g., Limited distribution of Houston, Dallas and San Antonio NBA teams in Fox Sports Southwest.

C. Distribution by cable and alternative media is limited to approximately 65% of television households.

D. Regional Sports Network may be tiered, further limiting distribution.

**II. Relative Size of Audience Share**

A. Above distribution constraints limit size of audience.

B. Average ratings from 7:00 a.m. to 1:00 a.m. per regional network yield a limited number of viewing households making closed captioning economically burdensome.

-- See Regional Sports Networks Viewership data.

**III. Relative Programming Budgets**

A. Average production costs per event are approximately \$13,000.

-- See Regional Sports Networks Average Event Production Costs.

B. Average production costs per professional event are somewhat higher, typically ranging between \$15,000 and \$25,000. Comments at 8.

**IV. Lack of Repeat Value**

A. The Commission already has found that "sports events have substantial entertainment value only at the time of their occurrence." Comments at 9.

B. Consequently, captioning costs cannot be spread over multiple showings or recouped through subsequent syndication.

V. Technical Problems in Captioning Regional Sports Events

- A. The availability of real-time steno captioners varies from region to region.
- B. There is inadequate existing capacity for real-time captioning of regional sports events.

VI. Graphics as an Alternative to Closed Captioning

- A. Both Congress and the Commission recognize that there may be "alternative means of providing access to the hearing impaired."
- B. Important game information is provided through graphics.

-- See Exhibit B for information presented graphically in regional sports telecasts of MLB, NBA, and NHL games.

REGIONAL SPORTS PROGRAMMING SERVICES MANAGED BY FOX SPORTS NET*		
Regional Sports Network	Region**	Subscribers as of December 1996
Fox Sports Arizona	Arizona	740,000
Fox Sports Pittsburgh	Pennsylvania, Ohio, West Virginia	1,700,000
Fox Sports Midwest	Southern Illinois, Indiana, Missouri	1,220,000
Fox Sports Northwest	Alaska, Idaho, Montana, Oregon, Washington	2,410,000
Fox Sports Rocky Mountain	Colorado, Idaho, Kansas, Nebraska, Nevada, New Mexico, Utah, Wyoming	2,310,000
Fox Sports South	Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina	5,230,000
Fox Sports Southwest	Arkansas, Louisiana, New Mexico, Oklahoma, Texas	4,750,000
Fox Sports West	Southern California, Hawaii, Nevada	3,960,000***
Sunshine Network	Florida	3,700,000

\* Fox Sports Net also has non-controlling ownership interests in and does not manage Home Team Sports, SportsChannel Chicago, SportsChannel Pacific, and SportsChannel Philadelphia/PRISM.

\*\* The regions may include only a portion of the designated states. Consequently, different portions of the same state may be included in multiple regions.

\*\*\* Fox Sports West recently has launched a second regional sports network, Fox Sports West II, which has approximately 350,000 subscribers. The subscribers reported above are for Fox Sports West I.

## REGIONAL SPORTS NETWORKS VIEWERSHIP

**Time Period Average: Monday-Sunday, 7:00 a.m. - 1:00 a.m.  
(July 1995 - November 1996)**

<u>Market</u>	<u>RTG</u>	<u>Total DMA HH</u>	<u>Viewing HH in DMA</u>
Dallas .....	0.2	1,826,142	4,110
Denver .....	0.3	1,161,080	3,105
Houston .....	0.4	1,575,681	6,553
Los Angeles .....	0.4	4,924,832	17,782
Miami .....	0.4	1,339,265	4,932
Orlando .....	0.3	999,469	3,166
Pittsburgh .....	0.7	1,150,297	7,598
Portland .....	0.2	934,334	1,958
San Antonio .....	0.3	636,988	1,670
San Diego .....	0.4	911,656	3,979
Seattle .....	0.5	1,469,607	7,043
St. Louis .....	0.2	1,110,725	1,922
Tampa .....	<u>0.2</u>	<u>1,397,288</u>	<u>2,336</u>
<b>Average .....</b>	<b><u>0.3</u></b>	<b><u>1,495,182</u></b>	<b><u>4,486</u></b>

# **REGIONAL SPORTS NETWORKS AVERAGE EVENT PRODUCTION COSTS**

<b><u>Regional Network</u></b>	<b><u>Production Cost Per Event</u></b>
Fox Sports Arizona .....	\$15,705
Fox Sports Midwest .....	22,172
Fox Sports Northwest .....	9,140
Fox Sports Pittsburgh .....	10,576
Fox Sports Rocky Mountain .....	20,713
Fox Sports South .....	12,565
Fox Sports Southwest .....	9,086
Fox Sports West .....	16,088
Fox Sports West2 .....	6,842
Sunshine Network .....	<u>9,119</u>
<b>Average Production Cost Per Event .....</b>	<b><u>\$13,200</u></b>

## **REGIONAL SPORTS ON-SCREEN GRAPHICS**

### **PROFESSIONAL BASKETBALL**

#### **Score**

- The score is displayed after most baskets; during and after time-outs; and before and after commercials. The scoreboard also includes the running game clock.

#### **Player Information**

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current statistics or a "hero" graphic (e.g. how they are performing in that game, performance in the last game or last five games, etc.). During free-throws, identification information usually is provided.

#### **Fouls**

- The player committing a foul typically is identified with information concerning the nature of the foul. Players who foul out of a game are identified.

#### **Coaches**

- Coaches generally are identified with their names and records. Additional information, such as past coaching positions and record versus particular opponents, typically is provided.

#### **Additional Game Information**

- Throughout the game, various statistical graphics are used to tell the story of the game, as well as the particular team's standing in the league or division.
  - Game summaries are used during the game to update information, such as turnovers, field goal percentage, free-throw percentage, fouls and any pertinent information at the time of play.
  - Statistics are provided graphically at the end of each quarter (first quarter statistics, halftime statistics, third quarter statistics, and final statistics).



- When there is no scoreboard/clock displayed during play, an individual graphic may be displayed that highlights an important statistic at that point in the game (e.g. turnover comparison, three-point field goal percentage comparison, timeouts left for each team, team fouls, who to foul, etc.).
- Division standings are provided when it is relevant (e.g. two teams from the same division are playing each other for a critical playoff position).
- "Special" graphics are used under certain circumstances (e.g. if a player is at the free-throw line and it is a one-point game and the player has a high or low free-throw percentage).

### **Other Information**

- Arenas are graphically identified with their names and locations.
- Teams as a whole are graphically identified with their records and vital team statistics throughout the game.

## **PROFESSIONAL HOCKEY**

### **Score**

- There is a regularly-displayed on-screen clock and score.

### **Goals**

- When a goal is scored, the score generally will be displayed.
- After a goal is scored, the player who scored the goal generally is identified with information, such as number of career goals, number of goals in that game, time scored, who assisted and whether it was a power play goal.

### **Penalties**

- When a penalty is called, it usually is graphically identified with a shot of who received the penalty and the length of penalty (e.g. two minutes for high-sticking).

### **Power Play**

- During power plays, a power play graphic appears periodically that shows the current score, which team is in the power play, and the running clock counting down the penalty.

### **Player Information**

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current statistics or a "hero" graphic (e.g. how the player is performing in that game, performance in the last game or last five games, performance in the previous meeting with a particular team, etc.).

### **Coaches**

- Coaches generally are identified with their names and records. In addition, various information, such as past coaching positions and record versus particular opponents, typically is provided.

### **Additional Game Information**

- Throughout the game, various statistical graphics are used to tell the story of the game, as well as the particular team's standing in the league or division.
- Scoring summaries are used between periods in conjunction with highlights of each goal to capulize each goal scored. The following information is graphically provided in the scoring summary: Time of the goal, who scored it, who assisted (if any), whether or not it was a power play goal.
- Individual period statistics are summarized graphically at the end of each period (first period statistics, second period statistics, final statistics).
- When there is no scoreboard/clock displayed during play, an individual graphic may be displayed that highlights an important statistic at that point in the game (e.g. penalty killing, face-offs, power plays, shots on goal, shots on power play, etc.).
- Division standings are provided when relevant (e.g. two teams from the same division are playing each other for a critical playoff position).
- "Special" graphics are used for various players under certain circumstances.

### **Other Information**

- Arenas are graphically identified with their names and locations.
- Teams as a whole are graphically identified with their records and vital team statistics throughout the game.

### **PROFESSIONAL BASEBALL**

#### **Score**

- There is a regularly-displayed on-screen clock (inning) and score.

#### **Ball and Strike Counts**

- During at bats, the pitch count and outs are updated.

#### **Player Information**

- Periodically, when a player enters a game, that player is identified graphically with information that may include a biography, current average, updated game statistics, and season statistics.
- An updated box score generally is used after batter changes, updating hits, runs and errors.

#### **Additional Game Information**

- Throughout a game, various statistics are shown, including information about division standings, league leaders, playoff standings, etc.

183 (1996). Of course, the audience attracted by programming depends upon a number of variables including the quality and popularity of the programming, the number and type of distribution outlets, competing programming, and day and time of day aired. However, for regional sports networks, the most frequently viewed programming typically is men's professional baseball, basketball and hockey. Using Fox Sports Southwest as a sample market, the ratings of particular games will vary widely depending upon the sport. For example, an NBA game between the San Antonio Spurs and Golden State Warriors televised on November 17, 1996 drew a rating of 2.4 in San Antonio, but the game was unavailable in Dallas and Houston because of licensing restrictions. There are 641,740 television households in the San Antonio DMA such that a 2.4 rating yields roughly 15,400 viewing households.<sup>4</sup> A hockey game between the Dallas Stars and the Anaheim Mighty Ducks televised on November 15 drew a .7 rating while an NBA game between the Minnesota Timberwolves and the Dallas Mavericks on November 14 drew a 2.2 rating. Based upon the 1,848,550 television households in the Dallas DMA, these ratings yield 12,900 and 40,700 viewing households. For the Houston DMA, a November 16 game between the Golden State Warriors and Houston Rockets drew a 5.6 rating while an International Hockey League game between the Kansas City Blades and Houston Aeros televised on November 13 drew a .1 rating. With 1,595,350 television households in the Houston DMA, these ratings yield 89,300 and 1,600 viewing households, respectively. Although there are exceptions depending upon the sport, event and market, the ratings generated

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<sup>4</sup> Fox Sports Net recognizes that this methodology provides only a rough estimate of the number of viewing households. To the extent that MVPDs other than cable distribute a regional sports network, the percentage of cable penetration would understate viewing households. However, this approach also presumes that the regional network is carried by all cable systems in a market and provided to all subscribers by each system, which presently would more than offset the failure to include distribution by alternative media.

by college and high school events, particularly sports other than Division I men's college football and basketball, generate significantly lower ratings.<sup>5</sup>

Thus, even if the cost of real-time captioning were lower than the \$660 median of the Commission's estimated cost (Notice at ¶20), such cost would be prohibitive for even the most popular sporting events regularly distributed by regional sports networks. At 2 to 3 hours per event, the cost would range from more than \$.015 to \$1.24 per viewing household.<sup>6</sup> In contrast, even a lower-rated event on national network television will be viewed in hundreds of thousands of homes, reducing the cost of captioning to a fraction of a penny per viewing household. The mandatory closed captioning of hundreds of regional sports events annually for each regional network would pressure those networks to eliminate the less popular, professional and non-professional local events and substantially increase the production costs of the remaining events.

Such pressure would run directly contrary to the important contributions of regional sports networks to programming diversity and local origination. After an exhaustive

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<sup>5</sup> Typically, the territory for which such sporting events are licensed is not as narrowly limited as professional baseball, basketball and hockey games. However, such broader distribution throughout a regional sports network rarely offsets the significantly lower ratings when calculating total viewing households. Although multiple regional networks may share secondary backdrop programming, such as rugby, soccer and volleyball games, sports news, coaches' shows, anthologies, and similar programming, the audience shares of such programming are quite low.

<sup>6</sup> The per viewing household costs are estimated as follows: 89,300 households viewed the Houston Rockets game at a captioning cost of \$1,320 (2 hours x \$660 per hour) or \$.015 per viewing household for closed captioning; and 1,600 households viewed the Houston Aeros game at a captioning cost of \$1,980 (3 hours x \$660 per hour) or \$1.24 per viewing household.